IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 325 OF 1996
WITH
CRIMINAL APPEAL NOS. 481 AND 496 OF 1996.

Criminal Appeal No. 325 of 1996.

1. Ramdash Bhausaheb Babar
2. Sanjay Tulshidas Babar
3. Vijay Tulshidas Babar
4. Chandrasen Janardhan Babar..... .....
Appellants.
(Orig.Accd.Nos.1, 3, 5 & 7)
V/s
The State of Maharashtra .... Respondents.

Mr.Abhaykumar Apte, adv. for the appellants.

Mr.B.H. Mehta, APP for the State.

Criminal Appeal No. 481 of 1996.

The State of Maharashtra ....Appellant
(Orig.Complt.)
V/s
1.Ramdash Bhausaheb Babar
2.Sanjay Tulshidas Babar
3.Vijay Tulshidas Babar
4.Chandrasen Janardhan Babar..... .....
Respondents.
(Orig.Accd.Nos.1, 3, 5 & 7)

Criminal Appeal No. 496 of 1996.

The State of Maharashtra ....Appellant
(Orig.Complt.)
V/s
1.Arun Janardhan Babar
2.Sunil Vithal Babar
3.Vishnu Janardhan Babar
4.Baban Gulab Babar
5.Sunil Gulab Babar
6.Gokul Vithal Babar

7.Dadasaheb @Anil Vithal Babar... .....
Respondents. (Orig.Accd.Nos.2,
4, 6 & 8 to 11)
Mr.B.H. Mehta, APP for the State.

CORAM: V.G. PALSHIKAR
AND
V.C. DAGA, JJ.

7th June, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Criminal Appeal No.325 of 1996 as also other appeals are directed against the order dated 31.5.1996 passed by the Additional Sessions Judge, Solapur in Sessions Case No.276 of 1999.

2. Criminal Appeal No.325 of 1996 challenges the conviction of accused Nos.1, 3, 5 and 7 in the original sessions case under section 307 of Indian Penal Code to suffer imprisonment for five years and fine. They are also convicted under section 325 of Indian Penal Code for two years rigorous imprisonment under section 427 for six months rigorous imprisonment. All the sentences have been ordered to run concurrently.

3. Criminal Appeal No.481 of 1996 claims enhancement of sentence as recorded by the learned trial Judge according to the State having found that the accused Nos.1, 3, 5 and 7 were guilty of the offences of attempt to commit murder punishment of five years rigorous imprisonment was grossly inadequate.

4. Criminal Appeal No.496 of 1996 is directed against the acquittal of other accused persons being accused Nos.2, 4, 6 and 8 to 11 the contention

being that the evidence on record was inadequate to convict them also.

5. Since all the appeals arrive out of the same order and trial they were heard together and are being decided by this common judgment and order. With the assistance of the learned advocate for the appellants and the additional public prosecutor we have reappreciated the entire evidence on record. The prosecution case as unfolded on reappreciation of evidence stated briefly is that :

On 21.11.1992 around 9.00 p.m. when the complainant Madhav was sitting in front of his house and the accused persons came there who were 11 in number and started abusing Madhav-complainant as to why he has lodged a complaint against accused persons and accused No.1-Ramdas finding the answer of Madhav unsatisfactory he was dragged out of the house and assaulted by the accused persons with sticks and chains. Others who tried to intervene were also beaten up and then the accused ran away. Complainant Madhav was thereafter taken to the Karmala and around 2.30 in the night complaint which came to be recorded as First Information Report was lodged with Karmala police station. On the same day the accused persons were arrested. Investigation was completed and all the 11 persons were prosecuted under section 307 and other connected provisions of the Indian Penal Code for murderously assaulting the complainant Madhav. The prosecution examined 23 witnesses to prove its case. The learned trial Judge on appreciation of entire evidence came to the

conclusion that the prosecution has proved the guilt in so far as accused Nos.1, 3, 5 and 7 are concerned and therefore proceeded to convict them as aforesaid. However he came to the conclusion that the involvement of other accused persons was not proved beyond doubt and therefore proceeded to grant them benefit of doubt and acquitted them. It is on the basis of this judgment that the aforesaid appeals as mentioned have been filed.

6. Shri Apte, learned counsel appearing on behalf of the appellants has submitted that there has been gross misappreciation of the evidence on record. Reliance is heavily placed on the previous enmity between the parties. The testimony on which reliance is placed is of highly interested witnesses and in the circumstances it is unsafe to convict the accused persons in appeal No.325 of 1996. The contention of the learned counsel was that on the same set of evidence learned trial Judge has chosen to acquit accused Nos.2, 4, 6 and 8 to 11. In so far as that acquittal is concerned therefore the evidence is rejected by the learned trial Judge and on the same set of evidence therefore conviction of the appellants in appeal No.325 of 1996 recorded by the learned Judge is illegal and therefore unsustainable.

7. These submissions are countered by the learned public prosecutor by pointing out that there is already an appeal admitted and pending being criminal appeal No.496 of 1996 challenging the acquittal of these persons as also there is an appeal for enhancement of sentence, the argument being that having accepted the testimony of the witnesses in so far as accused

Nos.1, 3, 5 and 7 are concerned the learned trial Judge erred in rejecting it in relation to other accused persons whom he then acquitted. According to the learned public prosecutor the acquittal is unsustainable in law. The evidence was rightly accepted and ought to have been accepted in its totality. In so far as sentence is concerned it is the contention that the assault was premeditated and grouping and therefore only five years imprisonment is inadequate. We have to examine these rival contentions in the light of evidence as it stands on record.

8. P.W.1-Parshuram is the witness to the spot panchnama and has explained the circumstances existing at the spot where the offence is alleged to have taken place. He has pointed out that there was and electrical pole and there were to bulbs on that pole. He is also witness to seizure of certain bamboo sticks and he has proved the panchnama as Ex.27. From his cross examination it is evident that there is no reason to disbelieve this witness.

9. P.W.2-Dhanraj is another witness in so far as presence of sticks and chains etc. was recovered at the instance of accused Ramdas from shed of Arun another accused. The seizure is duly proved, the articles seized are identified by the witness in the Court and his cross examination is inconsequential in as much as nothing has elucidated there in to require rejection of this evidence in its entirety. P.W.3-Arun is panch to the seizure of blood stained clothes of the victim Dhanaji and the said seizure cannot be disputed. P.W.4-Hirabai has deposed that she heard shoutings “Mala Wachhawa Re, Mala Wachhawa Re” and thinking that it was the voice of her

husband came out and saw her husband lying on the ground. She was told by the husband that somebody has pushed him down. She has deposed that the assault was going on for about 1/2 hour on Dhanaji. However she has not stated in clear terms any where in her deposition that the assault was witnessed by her. P.W.5-Pushpabai is an eye witness. She has deposed that around 9.00 p.m. On the date of incident the accused persons some of whom were named by her came to assault Jalinder. She saw accused No.1 Ramdas giving stick blow to her son. She then went inside the house and closed the door. She then states that she does not know when the accused persons left. She is thus a witness only to assault by accused No.1 on herself and her son and Ramesh. The assault on her was minor and did not result in any injury. She is therefore not an eye witness to assault on Dhanaji.

10. Then P.W.6-Sharadkumar is the doctor who examined the victim Dhanaji and has deposed to several injuries caused on his person. He has stated that the injuries were serious. He has proved his injury report also. He thus proves the fact that the victim Dhanaji was factually assaulted and has sustained several injuries. P.W.7 is Dr. Ajay who examined the complainant Madhav for the injuries on his person and has explained injuries in his deposition. He has proved his report. He also had examined Dhanaji and he corroborates with the doctor who examined Dhanaji earlier.

11. P.W.8-Pralhad is an employee of the Gram Panchayat who has deposed that on the day of incident he had put on light and had put them off in the next morning. He is examined only to show that the light factually

was on at the time when the assault took place. P.W. 9-Gopal is the person who has recorded the statement of victims as at that time he was assistant to the police. P.W.10-Babusha is employee of the Electricity Board who has proved that the electricity supply was on and light was on on the date of the incident. P.W. 11-Pitambar is an employee of the Revenue department who has drawn up the map of the site and has proved the same. P.W.12-Kausalya is the wife of the complainant. She is also an eye witness to the incident and has deposed that on 21st which was a Monday. The incident occurred around 10.00 p.m. When she along with her husband had taken their meals. The husband was sitting on the verandha and she was cleaning utensils when accused No.1-Ramdas, No.2-Arun, No.3-Sanjay, No.4-Sunil, No.5-Vijay, No.6-Vishnu, No.7-Chandrasen, No.8-Baban, No.9-Sunil and No.10-Anil came to their house from the village side and were abusing the complainant Madhav. She then describes how the accused persons were armed, how the assault took place. She has identified the accused in the Court. She has been cross examined but there is nothing in her cross examination which should result in her evidence being disbelieved. We will consider her testimony and its effect on the totality of evidence at a later stage.

12. P.W.13 is Madhav who lodged the complaint against the accused for the assault on him by the accused persons. Since then they were on inimical terms. He also is an eye witness and has given complete description of the assault on him in the night of 21.11.1992. He has

described as to how the accused came, how they were armed and how they assaulted him. He as also subjected to cross examination and has not been shaken by cross examination conducted on behalf of the prosecution. P.W.14-Dhondappa is the A.S.I. attached to Karmala police station who recorded the statement of the injured Madhav and registered the crime No.140/92. He has proved the same at Ex.56. P.W.15-Rajendra has in his deposition given the complete description of the incident which corroborates with deposition of P.W.12 in material aspects. He also has been subjected to cross examination but nothing incriminating has come out.

13. P.W.16 is Dhanaji who also is a victim of the assault. He has stated that on the day in question electricity supply went off for 2/3 minutes when he visited the house of Shivaji Babar to inform him that crop sowing instrument was not required as the sowing was completed. Thereafter he has stated as to how he was assaulted by the assailants. He has identified the accused persons although related to him. P.W.17-Chandrasen has in his deposition stated that P.W.16-Dhanaji and accused persons are known to him. He states that on the day in question while coming from vasti he heard shouts from the side of water tank and Hapsi and after reaching there he saw the accused persons beating P.W.16-Dhanaji. He has also identified the accused persons except accused Nos.2 and 3 who were not present in the Court. P.W.18-Pandurang is the driver of the jeep bearing No.MAF-419 belonging to one Popat Patil. He has deposed that on instructions of his

master he took P.W.13-Madhav, P.W.15-Rajendra and P.W.12 in the jeep to Dr.Dobhada at Parewadi Station. But the doctor refused to give treatment and advised him to take treatment at Karmala. There P.W.16-Dhanaji was also there in injured condition. He thereafter took all of them in the jeep to Karmala police station and upon requisition of the police he took them to a hospital at Karmala. P.W.19 is Dr.Anand has stated that on 21.9.1992 P.W.16-Dhanaji was brought to him by his brother. He has given description of the injuries sustained by said Dhanaji and issued a certificate. He has proved the same at Ex.95. P.W.20 is Dr.Shrinivas who was working as Registrar in civil Hospital, Solapur. He has stated the condition of P.w.16-Dhanaji at the time of being referred to him and given description of multiple injuries found on his body. He has certified that if the patient had not been given immediate treatment he might have died. He has proved his endorsement at Ex.97. P.W.21-Tanaji is P.S.I who then was attached to Karmala police station. He is a panch to the spot panchnama and proved the same at Ex.23. P.W.22-Ramchandra is A.P.I who was then attached to Karmala police station. He states that he recorded the statement of P.W.4-Hirabai and three more prosecution witnesses. Accused Nos.1 to 4 were arrested by him and subsequent on 25.9.1992 he arrested accused Nos.5 to 11 also. He further says that upon learning that P.w.16-Dhanaji being unconscious he converted the charge u/s.326 to that of u/s.307 of I.P.C. He has prepared the seizure panchnama of articles and proved the same. He has been cross examined at length but is not shaken anywhere so as to

discard his deposition.

14. It will thus be seen that it was on marshaling of the facts as emerged from the detailed appreciation of evidence as noted above by us that the learned Judge found accused Nos.1, 3, 5 and 7 only to be involved in the entire episode and therefore proceeded to convict them as mentioned above. The learned Judge has given adequate and cogent reasons for coming to the conclusion that the evidence of the eye witnesses is liable to be accepted in so far those accused are concerned. He has appreciated the entire evidence of the eye witnesses as also other witnesses and documents which corroborate the eye witnesses account of the prosecution witnesses on all material particulars and has chosen to acquit the rest of the accused persons.

15. As observed above we have also reappreciated the entire material on record. The eye witnesses account of the entire episode as given by P.W.12-Kaushalya, P.W.13-Madhav and P.W.16-Dhanaji successfully bring out the entire prosecution case. They have in their depositions very clearly stated the involvement of accused Nos.1, 3, 5 and 7. They have faintly tried to involve all other accused also but taking into consideration the involvement of the persons concerned and the enmity which was existing, such faint attempt and improvement of the case cannot result in the entire testimony being discarded as concocted or tutored. We have therefore no hesitation in confirming the findings of the learned trial Judge in so far as the guilt of accused Nos.1, 3, 5 and 7 is concerned.

16. It will be seen from the deposition of P.W.13-Madhav and P.W.16-Dhanaji that they themselves are injured in the assault. Their presence cannot be doubted. Their knowledge of the assailants cannot be doubted and above all whatever has been deposed to by them is duly corroborated by P.W.12-Kaushalya in her deposition. The panchnama of recoveries further corroborate testimony of these witnesses. It cannot be branded as the case where interested witnesses have given tempted evidence on the basis of which ordering of conviction or maintaining thereof in appeal is not possible. Since we are in complete agreement with the findings as given by the learned trial Judge for the reasons we have already mentioned above we do not deem it necessary to advert to each of the findings and specifically confirm it by appreciation or reappreciation of the evidence. The evidence of P.W.12-Kaushalya, P.W.13-Madhav and P.W.16-Dhanaji cannot be impeached on any substantial ground. The fact that they are interested in prosecuting accused persons is natural and equally natural is the fact that they would be interested in speaking the truth in relation to the persons who have factually assaulted them. There is no reason to accept the contention that they have unnecessarily impleaded or roped in the accused persons. There is factually no evidence in so far as other accused are concerned and therefore the contention of the learned Prosecutor that the appeal against acquittal of other accused is liable to be accepted in view of the fact that the evidence of those very witnesses viz. P.W.12-Kaushalya, P.W.13-Madhav and P.W.16-Dhanaji is accepted in relation to the accused

Nos.1, 3, 5 and 7. In fact on reappreciation of the evidence of these eye witnesses and other supporting documentary evidence it is obvious that the conclusion drawn by the learned trial Judge in relation to other accused persons was proper. We endorse that finding. Again since we accept the findings of the learned trial Judge any further reasoning or elaboration, in our opinion, is not necessary.

17. That takes us to the question of sentence. The incident is old. It has occurred in 1992. More than 12 years have elapsed. The learned trial Judge has on proper appreciation of evidence found that sentence of five years rigorous imprisonment would meet the ends of justice. Basically awarding of sentence on finding of guilt is a matter of discretion to be judiciously exercised by the Court at first instance. IN this case such exercise is done by the learned Sessions Judge while awarding the sentence of five years rigorous imprisonment for the offence under section 307 of Indian Penal Code. We have concurred with the findings of the learned trial Judge when he records guilt of the accused Nos.1, 3, 5 and 7. We see no reason to take any different view on the point of sentence than the one taken by the learned trial Judge while sentencing the accused persons i.e. Accused Nos.1, 3, 5 and 7 to suffer rigorous imprisonment for five years. Appeal for enhancement therefore deserves to be dismissed. We have already given our reasons why the evidence was rightly accepted as against accused Nos.1, 3, 5 and 7. In so far as acquittal of other accused is concerned the maximum that can be said in favour of the prosecution is that conviction of

the other accused also would be possible. On reappreciation of evidence merely because we are of the view that the evidence can be appreciated to convict the accused already acquitted is no ground to interfere with the order of acquittal. On analysis of the entire evidence on record we are firmly of the opinion that the acquittal as recorded by the learned trial Judge cannot be in any manner called illegal or perverse. It is established principle of law by now that unless the acquittal is found to be perverse and/or illegal interference after order of acquittal is not advisable. In any event, justice has been done by convicting accused Nos.1, 3, 5 and 7. The appeal against acquittal of other accused also therefore deserves to be dismissed.

18. Having found that the learned trial Judge was right in finding the accused 1, 3, 5 and 7 guilty of the offence with which they are punished we also dismiss the appeal against conviction as filed by the accused. In the result therefore all the appeals fail and are dismissed.